

APPEAL NO. 041643  
FILED AUGUST 27, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 2, 2004. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. In her appeal, the claimant argues that the hearing officer's determinations that she did not satisfy the good faith requirement in the qualifying period for the sixth quarter and that she is not entitled to SIBs for that quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_; that she was assigned an impairment rating of 15% or greater; that she did not elect to commute her impairment income benefits; and that the sixth quarter of SIBs ran from March 10 through June 8, 2004, with a corresponding qualifying period of November 26, 2003, through February 24, 2004. The hearing officer did not err in determining that the claimant is not entitled to SIBs for the sixth quarter. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying period. The hearing officer determined that the claimant did not look for work in each week of the qualifying period for the sixth quarter and indeed the evidence in the record demonstrates that no job searches are documented in weeks seven, eight, or nine of the qualifying period, more specifically the period from January 7 through January 27, 2004, when the claimant was on bed rest for complications associated with a pregnancy and miscarriage. Accordingly, the hearing officer did not err in determining that the claimant did not satisfy the good faith requirement under Rule 130.120(e), which specifically requires that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." Contrary to the claimant's assertion on appeal, the hearing officer was not required to accept the claimant's testimony that she made follow-up calls to check on prior job searches in that period, particularly in light of the fact that those efforts were not reflected on her Application for [SIBs] (TWCC-52). In addition, the claimant cites Texas Workers' Compensation Commission Appeal No. 971349, decided August 25, 1997, and argues that because she was offered a position with one of the employers that she contacted during the qualifying period it was "prima facie evidence of good faith." At the outset, we note, as did the hearing officer, that the claimant did not actually begin working for

the employer after the job was allegedly offered to her and that fact certainly undermines an assertion of good faith. However, we further note that it is important to recognize that Appeal No. 971349 was decided before Rule 130.102(e), and its requirement that the claimant look for work each week of the qualifying period, became effective. Thus, the claimant's continued reliance on Appeal No. 971349 is misplaced and although we would agree that ultimate success in finding employment might be indicative of the good faith nature of a claimant's job search efforts, Rule 130.102(e) requires that a job search be made every week of the qualifying period. There are simply no exceptions listed to this requirement and, as such, we find no merit in the assertion that the hearing officer erred in imposing a requirement that is plainly established in Rule 130.102(e).

Finally, we briefly address the claimant's assertion that she satisfied the good faith requirement pursuant to Rule 130.102(d)(2) by satisfactorily participating in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). In this instance, the record reflects that the claimant signed an Individualized Plan for Employment (IPE) with the TRC on May 5, 2004, well after the end of the qualifying period. Accordingly, we find no merit in the assertions that she was participating in the TRC program during the qualifying period by performing the requirements set forth in the IPE such that she satisfied the good faith requirement under Rule 130.102(d)(2). *Compare* Texas Workers' Compensation Commission Appeal No. 023229, decided February 4, 2003.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Veronica Lopez  
Appeals Judge